


Mistakes of Medical Examiners & Prosecutors in Homicide Cases


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South Carolina Public Defenders Association
Annual Conference Monday, 21 September 2020



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1. Overconfidence

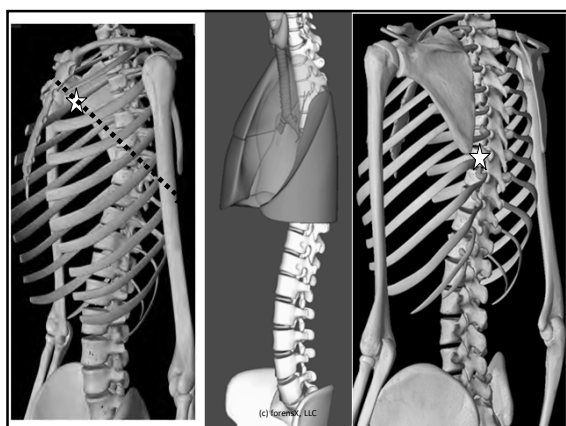
- Not considering alternatives
- “Slam dunk” confession evidence
- Significance of evidence positive & negative
- Alternate possibilities



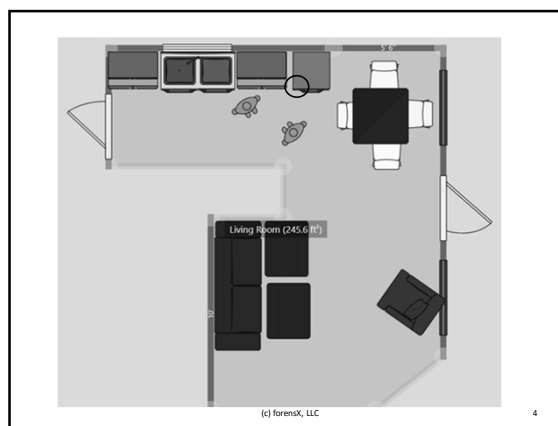
hidabartian.net

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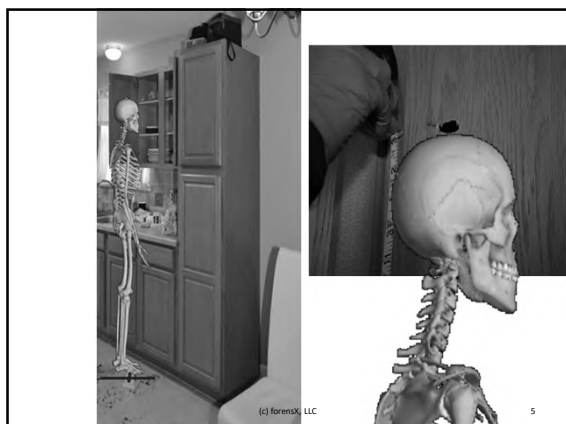
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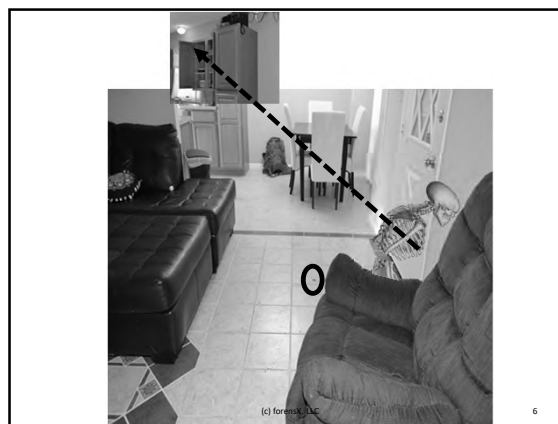
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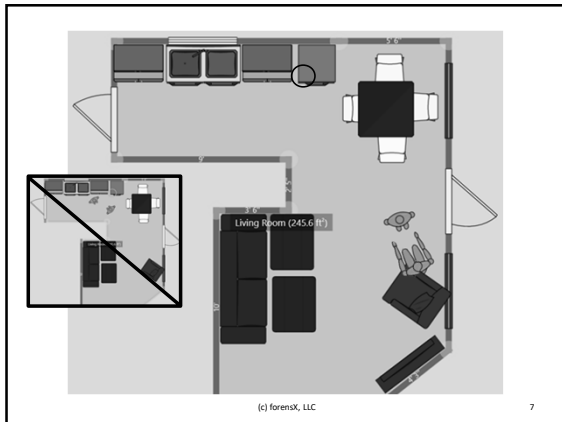
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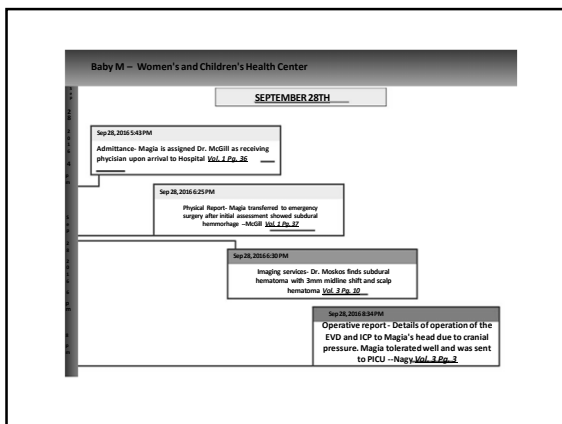
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2. Underconfidence

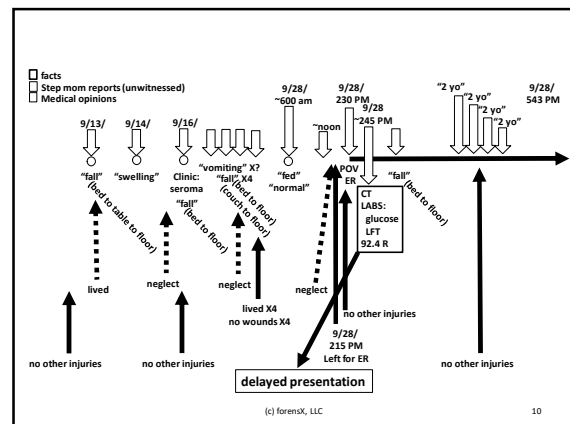
- Not trusting the experts
- You hire someone to do a job
- Understand your case
- Understand experts

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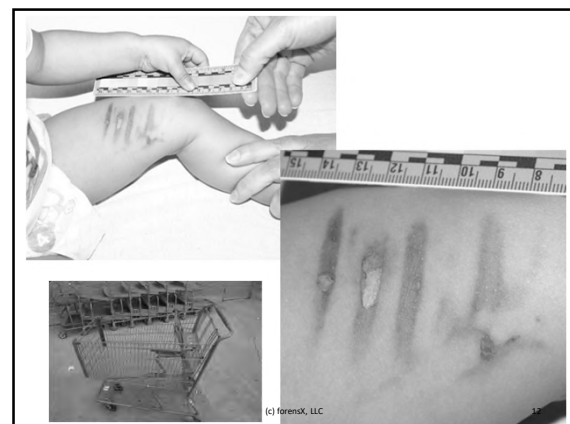
3. Cognitive biases

- Confirmation
- Overconfidence
- Anchoring effect
- Information & availability bias
- Tolerance to risk

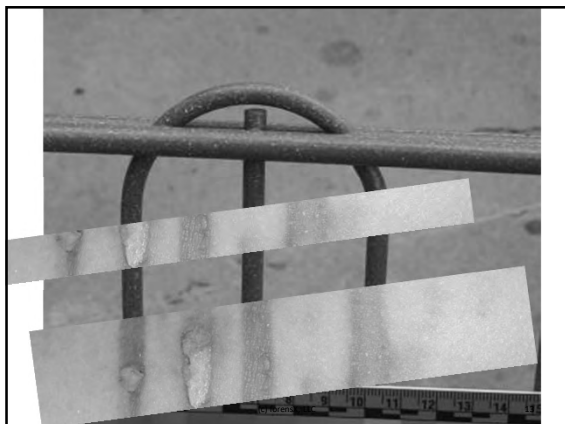
May be associated diagnostic inaccuracies or suboptimal management

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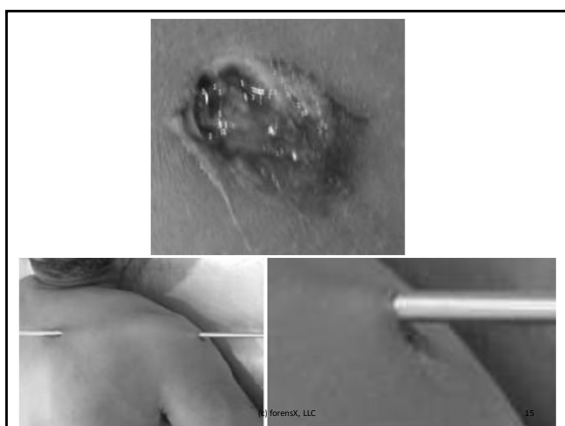
4. Working with what you have

- Not everyone is an expert in everything
- You can't polish a turd

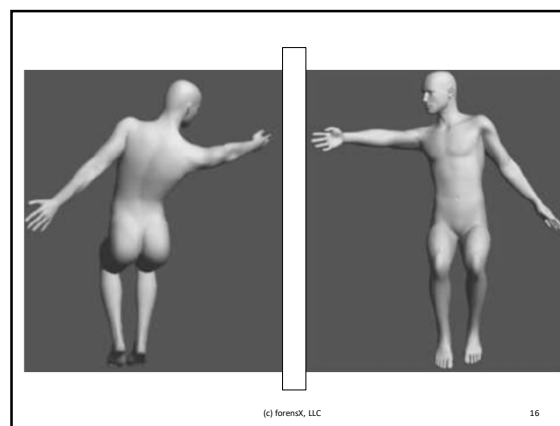
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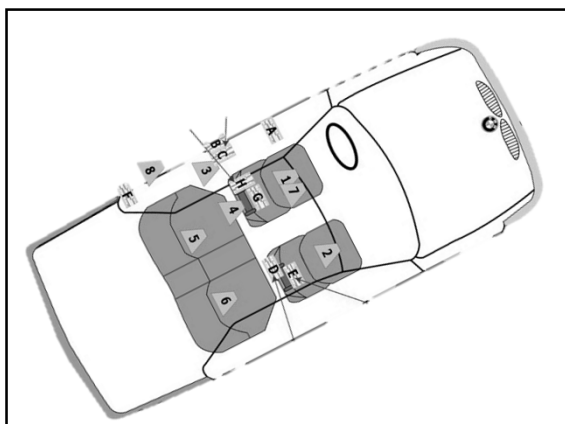
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5. "Experts"

- Are they qualified
 - check licensure
 - check boards
 - Anatomic Pathology
 - Clinical Pathology
 - check training
 - Medical school
 - switches in career
- Are they experts – in that field?

Forensic Pathology

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"...After that, I actually started out in surgery. I did a year-and-a-half of surgical residency, after which I realized it wasn't the area of medicine I wanted to be in. So I transferred into anatomic pathology residency.... my pathology was in Long Island, and then I moved into New York City and I did pediatric pathology fellowship at NYU for a year, completed that, and then went to the medical examiner's office in New York City for a one-year forensic pathology fellowship. And then a second year, while acting as an associate medical examiner, I did a forensic neuro and cardiology fellowship. During that time, I passed the board examinations"

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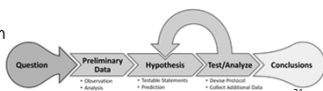
Biomechanical Analysis of SN Ethan Tucker's and SN Ethan Kelch's Injuries

André Loyd, Ph.D.

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Biomechanics vs. Forensic Pathology

- Biomechanics apply the scientific method in order to test if their theory matches the injury
 - Identify the injury
 - Identify the injury mechanism(s)
 - Evaluate the theories of injuries
 - Magnitude and direction of force(s)
 - Establish if injury is consistent with theories
 - Compare to forces & motions needed to cause claimed injury
- Injury Reconstruction

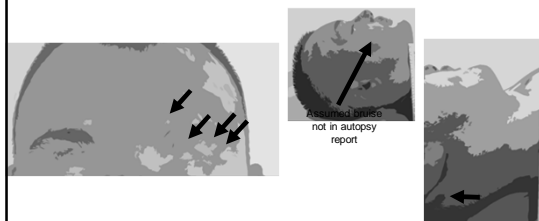


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SN Kelch's Injuries: Grouping of Injuries

- Face bruises and lacerations



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Was SN Kelch Strangled?

Evidence against strangulation

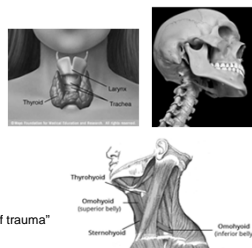
1. Neck Injuries NOT present

- No hyoid bone fracture
- No petechiae bleeding on the skin
- No bruising to the neck
- No thyroid injuries
- No larynx injuries
- No trachea injuries

The force would be applied to this area
This area would need to be compressed

2. "Strap muscle (infrahyoid muscles) mostly free of trauma"

The force would be applied to this area
This area would need to be compressed



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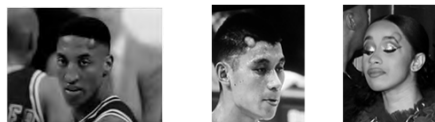
Disagreements with Dr.

Injuries to recessed areas argues against simple fall

- Premises is wrong
 - No recessed areas
 - No simple fall
- All is needed is a small points of contact

SN Kelch sustained significant head injuries that could have him unconscious

- No evidence SN Kelch knocked unconscious
- Subgaleal hemorrhages do not guarantee unconsciousness



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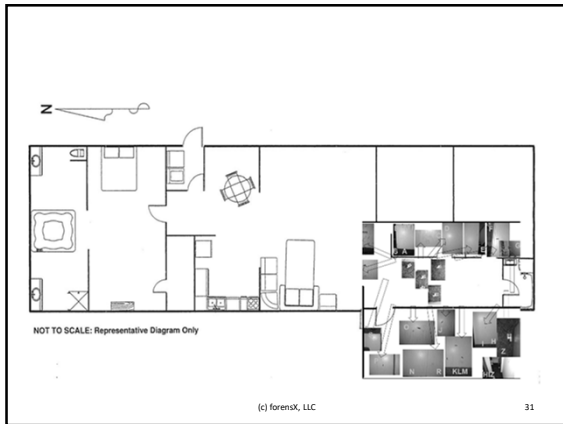
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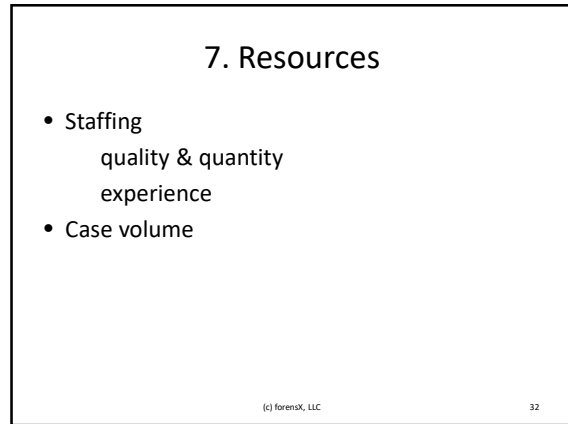
The singular most valuable commodity

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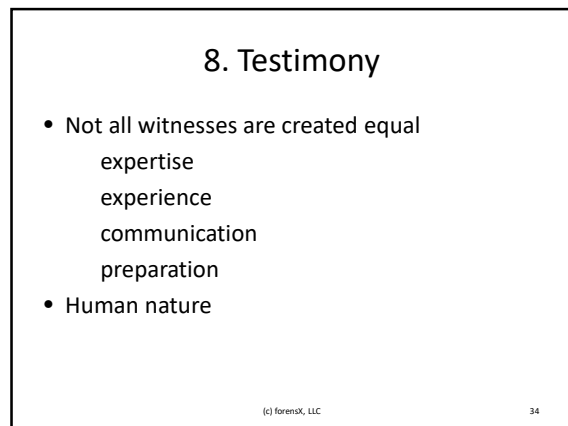
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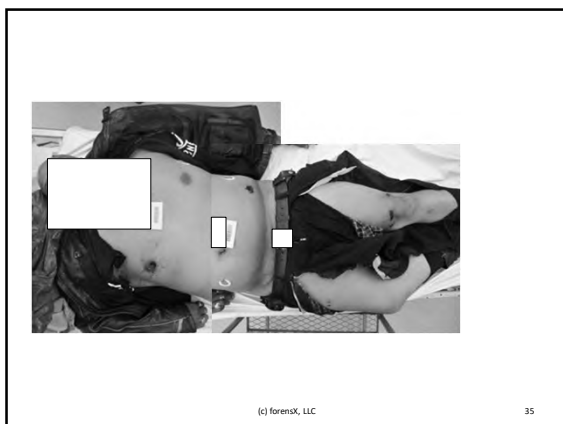
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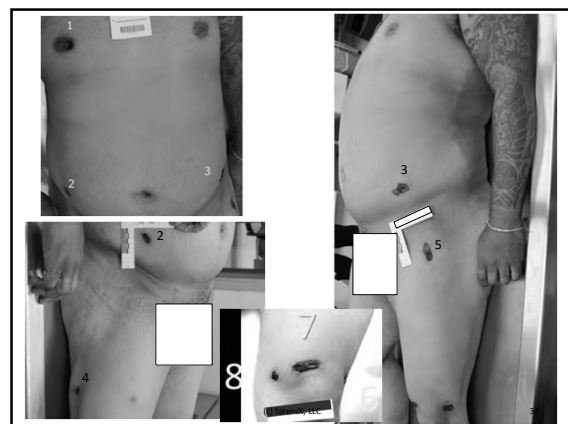
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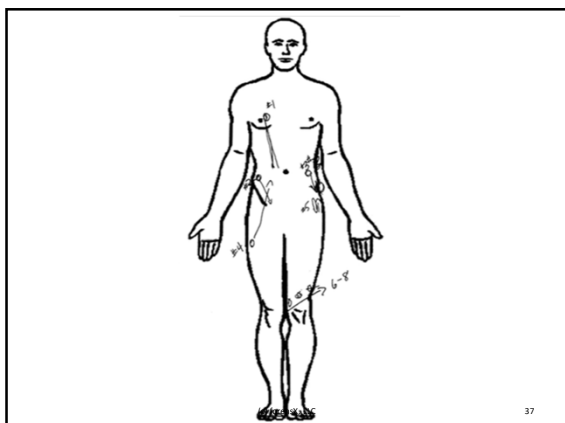
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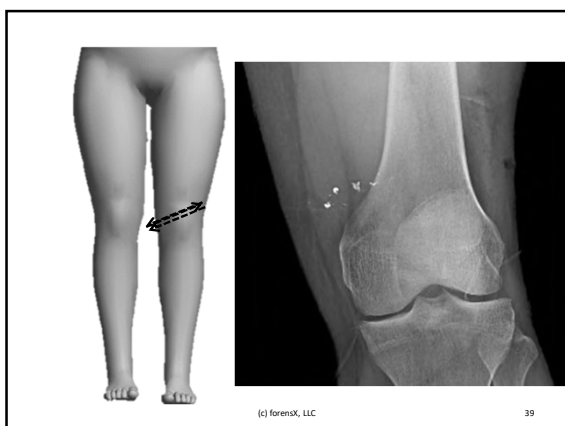
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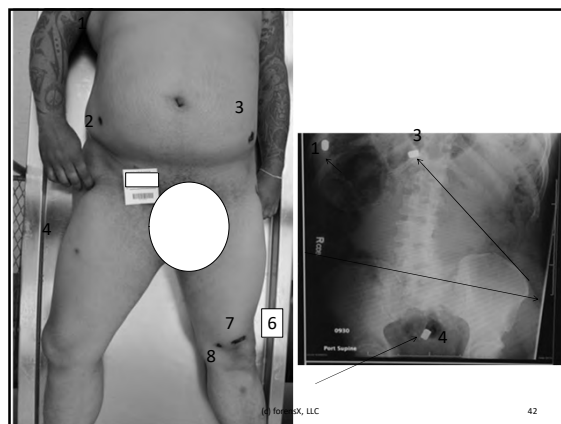
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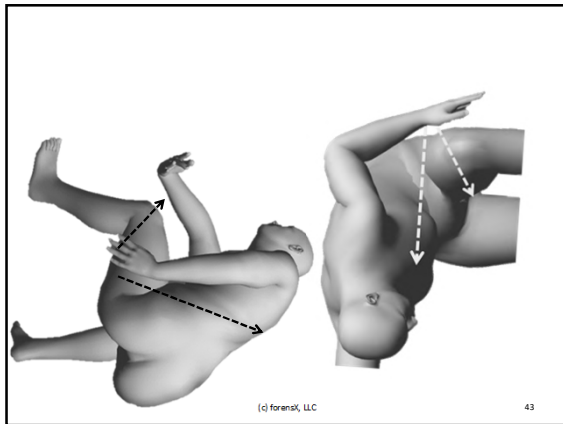
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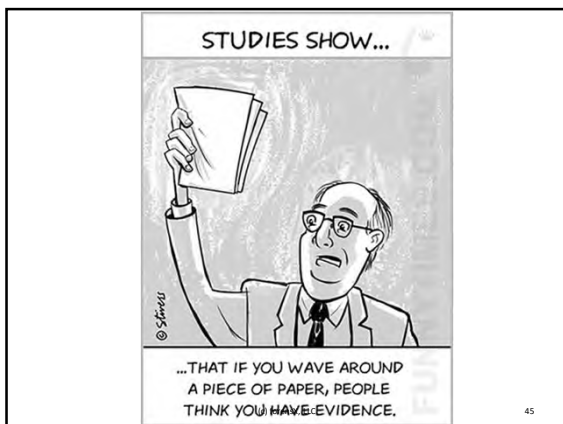
9. Scientists

- Sounds good, but...
- Are they?
 - science:
 - intellectual & practical activity encompassing systematic study of the structure & behaviour of physical & natural world through observation & experiment*
- ASCLD/ASCLD-LAB "Crime Lab" (but we're not biased!)
 - promote, encourage, & maintain highest practice standards
 - SOP manuals (?cookbook – cook vs. chef)
 - 9 essential elements represent critical path toward accreditation,
 - improves compliance with industry best practices,
 - promotes standardization, &
 - improves quality of services provided

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10. Just flat out wrong

- Make sure it's a homicide

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The whole story

Elgerie Cash and Jennifer Weathington
 - State: GA - Date of Exoneration: 5/1/2019
 Elgerie Cash and her daughter, Jennifer Weathington, both of Dallas, Georgia, were convicted in 2013 of murder in the death of Weathington's boyfriend, Lennis Jones. Their convictions were overturned in 2014 because of ineffective assistance of counsel, and they were acquitted at a retrial in 2019 based on evidence that the victim had shot himself.

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- 2:30 pm Elgerie Cash (45 yo) – 911 call Dallas, GA
- Daughter's boyfriend accidental GSW
- First responders (Sheriff) arrived within 2 minutes
- Upstairs bedroom Jennifer Weathington (19 yo) cradling "Donny" Jones (44 yo) bleeding head
- Paramedics quickly arrived
- Died hours later

5/30
 700
 800
 900
 1000
 1100
 1200
 1300
 1400 GSW
 1500 call (1449)
 1600 ER (1529)
 1700 death (1710)
 1800 ROME (1754)

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- Cash – Sheriff interview
new .40 caliber Glock
accidental discharge (one shot → two shots)
showing off weapon
racked slide
Jones grabbed weapon “It’s not loaded now”
saw remaining round “still loaded”
- Sheriff’s office – investigated as accident
called 911 immediately
gave aid to Jones
gave consistent statements
seemed appropriately shaken

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Autopsy

- 1 June 2011 Dr. Jon Eisenstat (Assistant ME GBI)
- ~45 minutes exam
- Initial report suggested not self-inflicted
no stippling
≥ 18 inches away
high velocity blood spatter on hand
- Sheriff’s Office
surprised
confirm with Chief ME (Dr. Kris Sperry)

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- Autopsy
GSW head
BAL 0.190
- Inconsistency: Cash – shot to temple
autopsy: entry behind right ear
blood spatter: high velocity

x-rays

photos (736-901)

exam (945)

all - suspicious (945)

photos (1038-1054)

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6 June 2011

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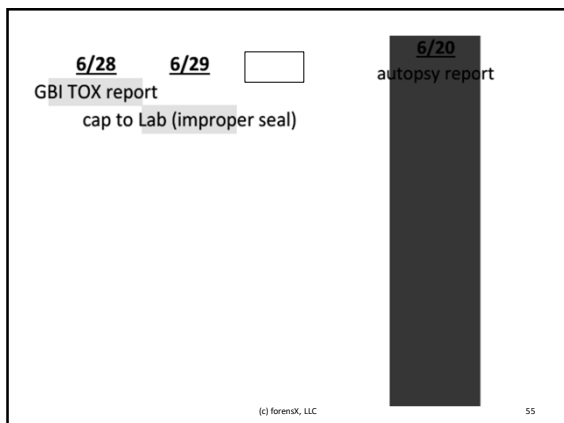
- Search warrant
- Jones’ baseball cap (laundry room)
scene photos – on bedroom dresser
(partially obscured by latex gloves)
missed during initial crime-scene
examination
hole matched entry wound
traces of Jones’s blood inside
- ME opinion
two months later
lack substantial blood – unlikely Jones wearing
firearms analysis – range

interview (1832)

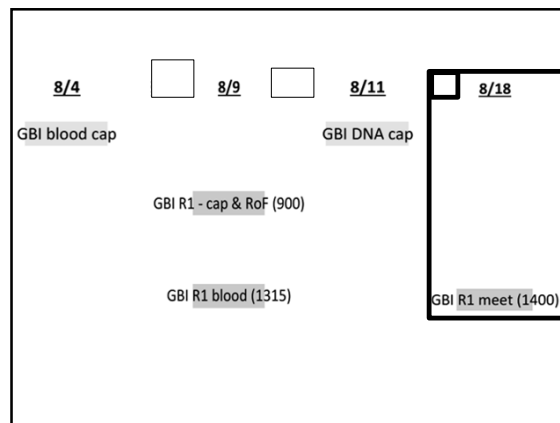
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19 December 2011

- Arrested
- Charged
 - malice murder
 - felony murder
 - aggravated assault
 - firearm possession during felony



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Mother, daughter charged with murder

Updated: Dec 20, 2011 - 2:56 PM

- Neighbors remember a lot of drama
 - "They were just very argumentative....
 - I guess (there were) a lot of domestic disturbances over there.
 - Cops would come over very frequently."
- neighbor ... heard the gunshot that day & saw Cash running out of the house screaming a few seconds later.
 - "I am shocked despite the drama.... You don't expect that from someone, especially that close by."

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Mother, Daughter Charged with Murder

By Jon Gargis (Patch Staff) - Updated Dec 20, 2011 7:17 pm ET

- U.S. Marshal's Service Southeast Regional Fugitive Task Force arrested
- Each face a felony murder charge

"We waited on autopsy results, consulted with the medical examiner, there were some inconsistencies with evidence at the scene and evidence with the individual that was murdered"

- Case remained open since it began

"...we've been sorting out some inconsistencies in the case, and as the result of a thorough investigation, we've finally been able to get murder warrants."

- Officials didn't want to rule out any possibilities, *whether it be "suicide, murder or accidental or whatever.... In their investigation, they realized they had enough then to believe it was a murder."*

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Mother, daughter charged with murder

Updated: Dec 20, 2011 - 2:56 PM

"With the arrest of a mother and daughter, Paulding County Sheriff's deputies believe they've solved a seven-month-old murder that initially looked like a suicide."

"...detectives were not convinced & launched an exhaustive investigation that ...included GBI"

"It was a very in depth investigation...."

"They worked closely & examined evidence at the scene, the autopsy report from the medical examiner's office. All those things led them to an arrest."

"Deputies are not releasing why they think the mother and daughter committed the crime, but do confirm that Jones was living in Cash's house and was romantically involved with Cash's daughter."

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Let's Make a Deal

- Weathington offer:
testify against mother
plead to tampering with evidence (no prison)
- Rejected

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Defense Counsel

- Weathington – John Rife, Esq. (court-appointed)
- Cash –
Lee Sexton, Esq. (conflict) – paid up front
Thomas Ford, Esq.
- Prosecutors
theory of crime – nebulous
unclear who pulled trigger
Cash's gun – clearer connection
- Rife's investigator - ?Ford
Ford wouldn't take Cash's calls
help him serve subpoenas
appeared disinterested in Rife's firearms report

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14 October 2014 Trial

- Jury selection
Cash's ex-husband
Cash objected to Ford
Ford: "Shut, the fuck up, bitch."
- Ford's conduct erratic throughout
cursed (jurors asked Judge to make him stop)
mocked witness' voice (throat cancer)
appeared to fall asleep at times
appeared to have brought few (if any) files
asked to use Rife's materials

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State's case

- Motive
Jones & Cash friends since teenagers
lived together 3 years
recent rift – dating Weathington (25 yr gap)
Jones' co-worker testified – young woman called about life insurance
- Physical & forensic evidence
ME (critical)
absence of stippling around entry
spatter on hands from head wound
cross – formed final opinion before studying hat
Firearms Examiner
~2-3 inches range of fire
Bullet trajectory
fired from hip at ~2 feet distance (self-inflicted)
did not concede Jones wearing hat

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Firearms

- State's scenario
one woman shot Jones
shot fired bullet through hat
deposit fine blood mist inside hat
- District Attorney Donald Donovan
"I also cannot explain how Donny Jones' hat got a bullet hole in it.
But you know what? I don't have to explain that."
- Rife's firearms expert
favorable to women
never called to testify
concern testimony might be more helpful to Cash (not Rife's client)
- No defense witnesses
- Ford (closing)
destroyed state's evidence (DVDs)
put on Jones' hat & summoned Jones to speak to Cash

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Outcome

- Judge – reminded jurors serious work
- Cash & Weathington – guilty (25 October 2013)
all charges
each – life in prison
- Jurors ran out courthouse to avoid Ford

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Appeals

THE STATE V. CASH ET AL. (S15A0720) 2015

"Here, there is no evidence of conduct before, during, or after the shooting that one defendant intentionally aided or abetted the other or intentionally advised, encouraged, hired, counseled, or procured the other to commit murder."

"Even when the evidence is legally sufficient to sustain a conviction, a trial judge may grant a new trial if the verdict of the jury is 'contrary to...the principles of justice and equity,' or if the verdict is 'decidedly and strongly against the weight of the evidence.'"

THE STATE V. CASH ET AL. (S17A1059) Oct 2017

*...evidence, while not conclusive,
did establish common criminal intent.*

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April 2019 Retrial

- New attorneys (Keenan Parsons, Esq. & Aaron Henrickson, Esq.)
- Witnesses
 - Dr. Terry
 - Dr. Downs
 - state had approached him to testify
 - 29-page report
 - blood spatter
 - lack of stippling
 - lack of brain matter inside hat
 - scene
 - hat
 - cognitive bias
- ME: erred regarding blood on hands (aspiration)

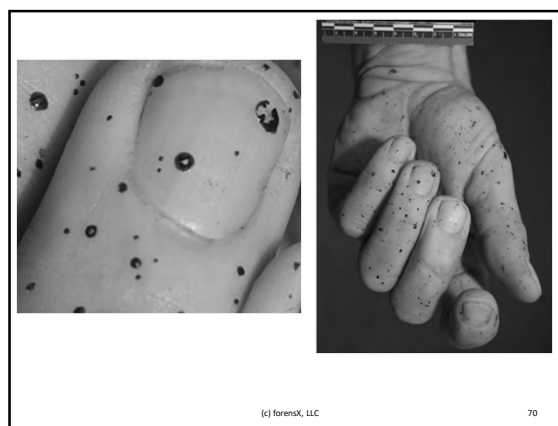
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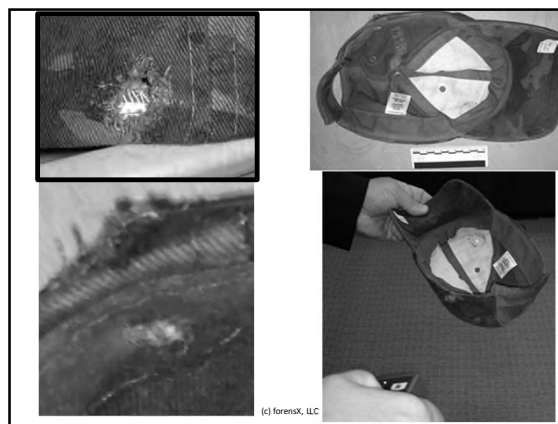
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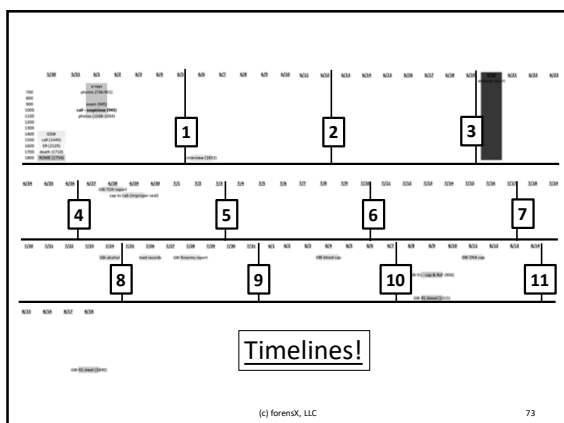
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Outcome

- Jones – substantial gunpowder residue right hand
- Jones' son:
 - dad was left-handed (first trial)
 - firearms safety
- Ordinarily left handed
 - used right hand for many tasks
 - at least once prior fired pistol right-handed
- Hunting buddy:
 - told investigators Jones was right-handed
- 1 May 2019: acquitted all charges
- No compensation

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Lessons?

- Don't accept the easy answer
 - "The road to the truth may be lonely, but the view is great and the destination worthy."
- It's only impossible if it *didn't* happen

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